

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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JAN 26 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter)

Federal-State Joint Board)

On Universal Service)

Report to Congress)

CC Docket No. 96-45

COMMENTS OF COMCAST CORPORATION

Comcast Corporation ("Comcast")¹ hereby submits its comments in response to the Commission's Notice seeking information to use in preparing its Report to Congress on its implementation of universal service provisions of the Telecommunications Act of 1996 ("1996 Act" or the "Act").² Comcast serves over 4.3 million cable customers in 20 states, and over 800,000 cellular customers in Pennsylvania, New Jersey, Delaware and Maryland. With interests in both wired and wireless services, Comcast has a unique perspective on ensuring that universal service goals are achieved in a pro-competitive, cost-effective manner.

As a founding member of the Cable in the Classroom program, Comcast has provided news, public affairs, and educational programming to over 5,000 schools since 1989. In 1996, Comcast committed to provide schools in its cable modem service areas with free high-speed access to the Internet, and in 1997 expanded this commitment to include public libraries and

¹ Comcast Corporation is principally engaged in the development, management and operation of wired telecommunications, including cable television and telephone services; wireless telecommunications, including cellular, personal communications services and direct to home satellite television; and content, through principal ownership of QVC, the world's premier electronic retailer, through majority ownership of Comcast-Spectacor, and through its controlling interests in E! Entertainment Television, and through other programming investments.

² Public Notice DA 98-2 (rel. January 5, 1998).

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training for educators.³ In addition, Comcast intends to compete vigorously for contracts with schools and libraries under the Universal Service Fund ("USF"), and has already begun to provide expanded cable modem services to schools on a commercial basis.

INTRODUCTION AND SUMMARY

In the 1998 appropriations legislation for the Departments of Commerce, Justice, and State, Congress directs the Commission to review its implementation of the universal service provisions of the 1996 Act and submit a report of its findings to Congress.⁴ The Report is to review the consistency of the Commission's interpretations with respect to the plain language of the statute, the extent to which the Commission's rules promote the principles of the 1996 Act, and whether the rules apply fairly to all parties. Among the issues to be addressed, according to the chief sponsor of the legislation, is whether some "telecommunications providers" might not meet their responsibilities to preserve universal service.⁵

Comcast believes the Commission should interpret and apply the definitions in the 1996 Act in order to promote universal service -- including the expanded availability of advanced telecommunications and information technologies to schools and libraries -- in a manner consistent with the overarching goal of the legislation: to promote a pro-competitive, deregulatory communications marketplace.

³ Through its subsidiary, Comcast Cable Communications, Inc. ("Comcast Cable"), Comcast currently provides high-speed Internet access and cable modem service to over 175 schools free of charge, and will provide similar service to 250 public libraries by 2002. Its wireless subsidiary, Comcast Cellular Communications, Inc. ("Comcast Cellular") also provides wireless services to schools through the "ClassLink" program.

⁴ Departments of Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Act, 1998, Pub. L. 105-119, § 623 (1997) ("1998 Commerce, Justice, and State Appropriations Act").

⁵ Statement of Senator Ted Stevens (visited January 22, 1998) <<http://www.senate.gov/~stevens/isp.htm>>

In the Order implementing the USF program for schools and libraries, the Commission correctly concluded that Internet access is not a “telecommunications service,” and that a provider of Internet access service is not subject to assessment under the Act. The Commission also appropriately determined that all competing providers of advanced telecommunications and information services to schools and libraries should be eligible to receive USF funding, provided that the schools and libraries adopt an acceptable technology plan, engage in competitive bidding among service providers, and meet certain other criteria.

The public interest is served by requiring competition in the provision of services to schools and libraries, because competition will drive down the need for USF subsidies. Competition in the provision of Internet access service and other services to schools and libraries will ensure that universal service funds will be constrained at a minimum necessary level; competition will ensure the wider availability of efficient services priced more consistently with costs, which will reduce the total demand on the subsidy pool. Comcast intends to compete vigorously in its service areas to provide various services to schools and libraries.

While Comcast has consistently supported the public policy goal of promoting universal service, and particularly the importance of promoting access by schools and libraries to advanced telecommunications and information services, it is deeply concerned about potentially detrimental, anti-competitive effects on wireless that may result from the administration of the program. As a provider of both wireless (cellular and digital PCS) and wireline (telephony) telecommunications services, Comcast is a contributor to the USF. Like all contributors, Comcast has an interest in ensuring that the universal service program will be funded at minimum sufficient levels, and that it will be administered fairly, with minimum disruption to existing business practices, and in a fashion that permits carriers to forecast their obligations through their fiscal year. Recognizing

the need to promote the continued competitive development of wireless and wireline telecommunications services, the Commission must be especially mindful that the USF is carefully targeted to yield the minimum sufficient funding to recipients truly in need.

The percentage of universal service support provided by federal mechanisms, and the revenue base for support, should result in appropriately targeted subsidies and should be based on accurate revenue estimates. The federal universal service mechanism should be the sole means of assessing wireless carriers for universal service, and state universal service assessments on wireless should be pre-empted. In order to promote an accurately structured revenue base, the Commission's process for establishing revenue estimates must avoid inequities among competitors; this can be achieved by providing more complete guidance and using consistent assumptions for similarly situated competitors.

Moreover, the establishment of an appropriately targeted subsidy for rural, high cost areas is a fundamental, unresolved element of the universal service program. This must be achieved in a timely fashion, and should be based on tools that accurately identify minimum necessary areas and recipients within communities.

L. The Commission should interpret and apply the definitions in Section 3 of the Act to promote "universal service" in a manner consistent with purposes of the statute, amid the development of a competitive telecommunications marketplace.

In its landmark decision implementing the universal service provisions of the 1996 Act, the Commission relied on a set of definitions and principles to satisfy the statutory requirements of Section 254. In doing so, the Commission sought to establish a universal service support system

that would be sustainable in an increasingly competitive marketplace.⁶ In order to achieve the overarching goal of Congress -- to establish "a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening up all telecommunications markets to competition"⁷ -- the universal service program must be implemented with great care.

Comcast believes that the Commission's rules are a step toward implementing a complex mandate to provide "specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service".⁸ Each step of the way, the Commission must ensure that the rules and their administration do not lead to the collection of funds beyond those legitimately needed to promote the availability of those services which, in the aggregate, comprise "universal service," and are not disruptive to -- and in fact derive the benefits of -- a competitive marketplace.

In implementing the mandated program to promote the accessibility of advanced telecommunications and information technologies (including Internet-based services) to schools and libraries, the Commission has correctly interpreted the statute in several key respects.

First, by promoting competition in the provision of Internet access service and other services to schools and libraries, the Commission has ensured that the level of universal service funds will be constrained at a minimum necessary level. Competition will lead to the efficient provision of services priced more consistently with the costs of providing those services.

Competition is an essential factor in ensuring the efficient reform of the universal service support mechanisms. The Commission correctly insisted on competitive bidding processes for the

⁶ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 97-157, at ¶ 1 (rel. May 8, 1997) ("Universal Service Order").

⁷ Joint Economic Statement at 1.

provision of these services, and conditioned the receipt of subsidies on minimum competitive bidding standards. By empowering schools and libraries "to take the fullest advantage of competition to select the most cost-effective provider of Internet Access and internal connections,"⁹ the Commission has ensured that the public interest will be served.

The possible cost-savings from the promotion of competitive bidding are dramatic. Cable operators, in particular, can provide highly cost-effective Internet access solutions. As reported in The Wall Street Journal, cable companies are selling residential high-speed (1.5 Mbps) Internet access services for \$35 to \$45 per month, including the use of the modem; this is dramatically less expensive than either ISDN or the often-promised ADSL offerings by phone companies.¹⁰ It is reported elsewhere that in addition to the low subscription rates and faster speeds relative to other existing and new technologies, high-speed cable modems can provide more bandwidth than a T1 line, and the cable operator typically provides the equipment.¹¹ The early limited experience of Comcast in bidding to serve schools reinforces the point. In one instance where Comcast competed against major telecommunications and information service providers in New Jersey, Comcast was able to offer a solution that could save the school up to 65% in implementation and ongoing expenses.

As these figures indicate, the competitive bidding process will reduce demand on the universal service subsidy pool for schools and libraries; allow more schools and libraries to get online at the most favorable cost; and enable the Universal Service Fund to benefit more

⁸ 47 U.S.C. § 254(b)(5).

⁹ Universal Service Order at ¶ 594.

¹⁰ "Sprinting Behind Cable in Race to Offer Fast Data Access, Bells Back New Way", The Wall Street Journal, January 21, 1998, at B6 (reporting that ADSL modems are priced at roughly \$100 to \$200 per month, including Internet access, and cost as much as \$300 each). See also Paul Kagan Associates, Inc., Cable TV Technology, November 30, 1997, at 6-7.

¹¹ Cynthia Morgan, "Wired for Speed", Windows Magazine, December 1997, at 240.

recipients. To preserve these benefits, the Commission should protect the opportunities for a range of service providers to participate in the provision and advancement of universal service.¹²

A federal subsidy program that requires full and fair competition for the provision of such services to schools and libraries will ensure that marketplace forces constrain subsidy requirements at the lowest necessary levels. Driving prices for such services to efficient levels through the competitive process benefits all consumers by reducing the need to impose additional cost burdens on telecommunications users through inflated subsidies. Ensuring such competition in the provision of telecommunications, Internet access and inside wiring is an effective way to minimize the size of the fund, which can be helpful in addressing the concerns of some in Congress about the potential consumer cost burden.

There is a simple answer to the suggestion of some that while all providers of Internet access are potential recipients of universal service support, not all providers are contributors to the USF. The Commission has properly excluded the provision of Internet access service, whether provided by a telecommunications service provider or not, from the base of contributors to the Universal Service Fund. Section 254, which guides the Joint Board and the Commission in preserving and advancing universal service, clearly states that the public purpose of the schools and libraries fund is to promote access to advanced telecommunications and information

¹² Contrary to these important goals are various state practices that do not promote competition, instead distorting the long-term advancement of universal service by unfairly extending advantages to build-outs by incumbent local exchange carriers (LECs). For instance, under an "economic development" adopted by the New Jersey Board of Public Utilities at Bell Atlantic's urging, Bell has been permitted to redirect tens of millions of dollars in consumer savings toward providing discounts on selected services to public schools and libraries; we understand that schools are also being advised that these unfairly discounted rates are further subject to federal universal service subsidies. See In the Matter of the Board's Inquiry into Bell Atlantic-New Jersey, Inc.'s Progress and Compliance with Opportunity New Jersey, Its Network Modernization Program, State of New Jersey Board of Public Utilities, Docket No. TX96100707, Order, June 10, 1997 at 7-8.

technologies.¹³ In this context, and consistent with previous Commission findings, Internet access is an advanced information technology.

The application of the principle of competitive neutrality does not require identical regulatory burdens for all services heedless of all distinctions. On the contrary, competitive neutrality requires that the Commission make careful and purposeful distinctions in regulatory burdens depending on relevant marketplace factors. To the extent Internet access providers are also “telecommunications service” providers, their contributions to the fund are limited to an assessment on their provision of the latter service. Therefore, for universal service purposes, the Commission’s rules treat all providers of Internet access services in a neutral manner. The Commission must resist the urging of some to jump to the conclusion that future applications of Internet technology may possibly evolve into substitutes for today’s telecommunications services. Such a step would be grossly premature and would be certain to stifle innovation, derail the evolution of technology, and harm the public.

The Commission properly excluded from the base of contributors those providers of Internet access whose services do not include “telecommunications services.” The Commission’s rules continue the established and appropriate distinction between information services (such as Internet and packet data services) and telecommunications services. The statutory language clearly obliges “every telecommunications carrier that provides interstate telecommunications services” to contribute in some manner to the Universal Service Fund.¹⁴ The Commission has properly chosen not to impose assessments on an information service that does not include the provision of “telecommunication service.”

¹³ 47 U.S.C. § 254(b)(6).

¹⁴ 47 U.S.C. § 254(d).

Some have argued that such a distinction may confer a "benefit" on certain entities that are not direct contributors to the fund, i.e., information service providers who do not provide telecommunications services, at the "expense" of those who are direct contributors, i.e., telecommunications providers. But it is not at all uncommon to have a subsidy program for a social good that assesses a universe of contributors who may or may not directly enjoy the "benefit." A common example: in most communities, every real property owner pays an assessment to a local jurisdiction, the proceeds from which support public schools. This assessment is made even if the real property owner is retired, is without children, chooses to send his or her children to private schools, or is otherwise not directly receiving the "benefit" of the subsidy pool. And the universe of recipients often includes children whose families do not own real property. The mere fact that there may be some asymmetry between the class of payers and the class of recipients does not undermine the fundamental fairness of the program. So it is with the USF.

In summary, the Commission's implementation of the universal service program for schools and libraries promotes competition, which results in the best service at the lowest prices, constrains the need for public subsidy, and properly carries out Congressional intent to limit the universe of contributors to providers of "telecommunications services." This implementation serves the public and is consistent with the 1996 Act.

II. The percentage of universal service support provided by federal mechanisms and the revenue base for support must be calibrated to yield appropriately targeted subsidies and must be based on accurate revenue estimates.

The principle of establishing a targeted subsidy flow, which assesses an appropriately defined base of contributors, and provides sufficient (but not inflated) subsidy to those most in need, is a critical element of reforming universal service into an "explicit" subsidy program. A program that appropriately targets the flow of subsidies will promote fair results and will encourage and permit the economically correct levels of entry, investment and innovation.¹⁵ While Comcast has consistently supported the need to promote universal service through an explicit subsidy mechanism, a program that lacks the correct targeting and that unnecessarily interferes with marketplace development is highly objectionable. Therefore, Comcast recommends that the Commission take several additional steps to ensure the targeted flows of universal service subsidies to achieve these socially desirable results while minimizing potential disruptions and inequities that could limit the continued development of a competitive wireless and telecommunications marketplace.

First, the universal service rules as currently applied to wireless carriers will, absent greater attention to distinct technological aspects of the wireless marketplace, undermine the federal effort to target universal service subsidies and balance the statutory principles. The fundamentally "interstate" nature of wireless services is nowhere more evident than in the contorted process, in connection with determining the federal assessment, of requiring wireless carriers to attempt to identify "interstate revenues" by applying the same methodology as applies to wireline carriers. Given the mobile nature of wireless technologies, the inability to precisely determine the point of origin for calls, and the fact that the number assigned to a phone may not

correspond to the point of origin, the process of distinguishing "interstate" and "intrastate" calls is imprecise if not impossible. Consequently, a wireless carrier attempting this calculation exercise - which is central to establishing reportable revenues for purposes of universal service contributions - must engage in a series of assumptions that either are not necessary for wireline carriers or apply only with great confusion and contortion to the more competitive wireless marketplace.

As the Commission attempts to determine accurately the revenue base against which universal service assessments are to be applied, trying to apply an identical mechanism to fundamentally different technologies with distinct marketplace conditions yields competitive inequities that amount to barriers to the development of wireless services. Ultimately, these inequities may limit the extent to which wireless services can provide competing service in rural, high cost areas.¹⁶ These concerns are exacerbated by the potential impact of extensive, duplicative, and inaccurate universal service assessments by state authorities, which could be devastating to wireless carriers in increasingly competitive markets.¹⁷ To the extent that inaccuracies and inequities in universal service assessments are allowed to persist and are not checked in the development of state programs, the programs will fail to establish targeted, specific, and predictable universal service funding at minimum necessary levels. The principle of "competitive neutrality" in applying the universal service rules also requires some adjustment in

¹⁵ Universal Service Order at ¶¶ 199, 224, 226.

¹⁶ In certain states, including Arkansas and California, wireless carriers have been designated as "eligible telecommunications carriers" for purposes of receiving universal service subsidies. See, e.g., "Wireless Firms Eye Local Markets as Sprint Spectrum Gets ETC Status", Washington Telecom Week, January 2, 1998 at 1.

¹⁷ Comcast Cellular operates in one of the most competitive wireless telecommunications markets in the country. Entrants in the digital wireless voice market in Philadelphia already include at least four other voice competitors. The region also is the second highest in penetration, at over 20% for the total market, and is among the lowest in both pricing and revenue per subscriber.

the process for identifying reportable revenues in order to avoid unintended consequences that disfavor wireless technologies.¹⁸

The Commission must also better target its process for determining revenue estimates by revising its calculation process for wireless carriers. Failure to do so will yield unintended, anticompetitive results by potentially disfavoring certain providers.

Comcast has previously advised the Commission that its implementation process for establishing revenue estimates, which yields the revenue base for USF purposes, requires better, more complete guidance to carriers, and requires that the Commission apply consistent assumptions for similarly situated competitors.¹⁹ By contrast, the existing methodology for calculating assessments, which permits "good faith" estimates by each telecommunications carrier, has already resulted in competitive inequities. The wide range of assumptions carriers may make in "good faith" based on current guidance may bear little relationship to actual telecommunications traffic, are not necessarily accurate, and certainly yield contribution obligations that vary widely among competitors, even those in same geographic market.²⁰ Even where carriers apply assumptions in "good faith", the lack of a consistent methodology from the Commission creates an unnecessary potential for systematic underreporting or underestimating of revenues or, in some cases, overestimation of revenues. Comcast also recommends reporting revenues on an MTA basis; this also ensures consistency and reduces the possibility of

¹⁸ Universal Service Order at ¶ 47.

¹⁹ Comcast Cellular Communications, Inc. and Vanguard Cellular Systems, Inc. Joint Petition for Reconsideration, In the Matter of Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service, CC Docket No. 97-12, CC Docket No. 96-45, Report and Order and Second Order on Reconsideration, FCC 97-253 (released July 18, 1997).

²⁰ While some carriers may have estimated interstate revenues based on the technical operations of their respective networks, other parties have used different and entirely inconsistent information to estimate revenues. See, e.g., ex parte letter of counsel to Omnipoint Communications, Inc., filed August 21, 1997 in CC Docket 97-12, CC Docket 96-45.

anticompetitive disparities through differing averaging methods across different territories.²¹

Therefore, the administrative process requires more precise guidance to take into account the particular characteristics of wireless technology in order to avoid unintended differences in obligations -- as well as creating unintended barriers to competition -- among wireless services for purposes of universal service and identifying interstate traffic.

Furthermore, given that contributions already have been assessed based on widely varying assumptions and methodologies by similarly situated wireless carriers, the Commission must implement some form of "true up" to resolve inequities in contributions paid up to the time that the Commission corrects its calculation process. Certain carriers are making comparatively higher contributions because of the inconsistency of methodologies applied, and are therefore competitively disadvantaged right now as assessments are already being made on CMRS carriers and their customers. The principle of "competitive neutrality" demands prompt action to eliminate these competitive disadvantages. In the course of implementing changes to the process for administering the universal service program, the Commission and the fund administrators also should promote a targeted flow of universal service funds through additional, careful monitor to ensure that recipients use funds only for their intended purposes.

The establishment of an appropriately targeted subsidy for rural, high cost areas is another fundamental, unresolved element of the universal service program. With respect to these subsidies, the Commission appropriately concludes that a forward-looking economic cost methodology "will preserve and advance universal service and encourage efficiency" and should target support more accurately "by calculating costs over a smaller geographic area than the cost

²¹ Within the CMRS marketplace, PCS and cellular competitors are licensed different-sized territories by MTAs, BTAs, MSAs, and RSAs.

accounting systems that the ILECs currently use.”²² Subsidies for rural and high cost areas should be based on tools that accurately identify minimum necessary areas and recipients within communities. High-cost subsidy areas should be defined in the most narrow and precise geographic terms. At the same time, thresholds for identifying cost levels that would receive subsidies should be established to yield minimum necessary, yet sufficient flow of subsidy funds. Universal service subsidies should not create artificial barriers to competition in high cost areas from new or alternative services (including the potential use of wireless technologies in serving certain communities with especially high costs of wireline service) by raising presumptions that favor subsidizing incumbent LECs while disfavoring existing or potential competitors. The development of competing services should be promoted to ensure that rates in rural, high cost communities are comparable to other areas; this is more surely achieved through the benefits of competition rather than reliance on an indefinite outflow flow of universal service subsidies. Subsidy levels should be reduced or phased out as competing alternatives are ensured and economically efficient rates are established.

Finally, the federal universal service mechanism should be the sole means of assessing wireless carriers for universal service, and state universal service assessments on wireless should be pre-empted. Comcast has previously stated in the Universal Service proceeding that, both from a legal and policy standpoint, the Commission has original and exclusive substantive jurisdiction over CMRS by virtue of the 1993 amendments to section 2(b) and 332.²³ Nothing in the 1996 Act, including the specific Universal Service provisions in section 254, alters this fact.²⁴

²² Universal Service Order at ¶¶ 225, 226

²³ *See, e.g., Vanguard and Comcast Joint Petition for Reconsideration in CC Docket No. 96-45 at 2-7 (July 17, 1997)(Comcast/Vanguard Universal Service Petition).*

²⁴ *Comcast/Vanguard Universal Service Petition at 2-7.*

Section 332(c)(3) states: “[n]othing ... shall exempt providers of commercial mobile service (*where such services are a substitute for land line telephone exchange service for a substantial portion of the communications with such State*) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates.”²⁵ The Commission concluded that the “quoted language in section 332(c)(3) concerns a state’s authority to regulate the rates charged by CMRS providers to their customers for the provision of universal service, not the state’s authority to require CMRS providers to contribute to state mechanisms used to support universal service in that state as part of its general authority to regulate ‘other terms and conditions’ of CMRS.”²⁶ The *Pittencrieff Order* explains the Commission’s reasoning for permitting state universal service assessments.

This interpretation, however, finds no basis in the unambiguous language of section 332. Contrary to the interpretation offered in the *Pittencrieff Order*, the second sentence of section 332(c)(3) very clearly confirms state authority to impose nondiscriminatory “requirements” (not rate recovery mechanisms or surcharge obligations) on CMRS providers “to ensure the universal availability of telecommunications services at affordable rates.” The presence of this clear and unambiguous sentence in a section of the law which otherwise addresses the preemption of state ratemaking authority does not alter its meaning. Indeed, it is clear that it was added to ensure that general limitations on state ratemaking authority would not extend to “requirements” with respect to universal service, provided the condition in the parenthetical was satisfied. Looking to the underlying congressional intent of section 332 as well as its legislative history, the statute must be

²⁵ 47 U.S.C. § 332(c)(3)(A)(emphasis added).

read to prohibit state commissions from imposing their universal service levies on any CMRS carrier that does not serve as the state's wireline equivalent.


CONCLUSION

Comcast generally supports the Commission's application of the regulatory definitions relevant to universal service in the 1996 Act. In many key respects, the universal service rules work to promote a pro-competitive, de-regulatory communications marketplace, as Congress intended. The mandate for competitive bidding in the provision of advanced telecommunications and information services to schools and libraries will further enhance the benefits to recipients of services, will reduce the burden of universal subsidies, and will serve the public interest. However, the current USF program is flawed insofar as the rules as currently applied to wireless carriers fail to account for distinct technological and competitive aspects of the wireless marketplace. There must be careful targeting of universal service funds, more accurate calculations of the revenue base, and preemption of the ability of states

²⁶ Petition of Pittencrief Communications, Inc., for Declaratory Ruling Regarding Preemption of the Texas Public Utility Regulatory Act of 1995, Memorandum Opinion and Order, File No. WTB/POL 96-2 (rel. October 2, 1997) at ¶ 23 ("Pittencrief Order").

to apply duplicative and redundant assessments on fundamentally interstate wireless services. In addition, the great, unresolved issue of rural and high cost funding looms ominously, and the full impact of the subsidy program on competition cannot be assessed until that issue is resolved.

Respectfully submitted,


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DATED: January 26, 1998